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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

Teasa K. Weaver, Circuit Court Judge

Appellate Case No. 2021-001081

Robert H. Sarn, Appellant,

v.

James C. Rhea, III;
City Electric Supply Company;
John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military person, who claim any right, title, or interest in, lien upon, the entity designated as "Taschner Textiles Industries, LLC"; and
Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in or lien upon, the entity designated as Täschner Textile Industries, LLC," Defendants.

Of whom James C. Rhea, III and Täschner Textile Industries, LLC are the

Respondents.

PETITION FOR REHEARING
or REHEARING *EN BANC*

BACKGROUND

The Appellant, ROBERT SARN, owns Rental Court, a private road located in Rock Hill off Constitution Boulevard. Rental Court is the remaining property after development of the surrounding tract containing what is now seven (7) tracts, each accessed by Rental Court.

The Respondents JAMES C. RHEA, III and TÄSCHNER TEXTILE INDUSTRIES, LLC are owners tracts abutting Rental Court. The Deed into J.D. Properties of the Carolinas, LLC, TÄSCHNER's

predecessor, from SARN states, in relevant: part:

> Grantor covenants . . . that Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of the Grantor's development and as so as to allow the Grantee the full benefit and use of the Easement. [RECORD ON APPEAL, p.34-35].

In a "Grant of Easement and Right of Way", also between SARN and J.D. Properties, that document states:

> By signing this Agreement, Robert H. Sam, his heirs and/or assigns, hereby agrees to be fully responsible for the total cost and maintenance of said private road. [RECORD ON APPEAL, p.138-139.]

The same "Grant of Easement and Right of Way" states:

> Any damage that may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, shall not be the responsibility of Robert H. Sam, his heirs and assigns, including, but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas. LLC, its successors or assigns. [RECORD ON APPEAL, p.138-139.]

The Deed from SARN into RHEA does not contain the cited Deed language; no other agreement between SARN and RHEA exists. [RECORD ON APPEAL, p.46-48.]

By his action, SARN seeks contribution for repairs and maintenance performed. He has, without question, undertaken a duty of repair and maintenance. He has not released TÄSCHNER's predecessor from contribution. This is shown by the additional language quoted from the "Grant of Easement and Right of Way" with that person quoted above.

Without waiving the other arguments set out in his Brief, the Appellant would note the following points:

In this case, we have two provisions in the "Grant of Easement and Right of Way" dealing

with the upkeep of the easement known as Rental Way. These provisions are in apparent contradiction with each other. It is axiomatic that where a contract is open to construction, that construction which makes the contract valid and enforceable will be given to the contract. *Romanus* v. *Biggs*, 214 S.C. 145, 51 S.E.2d 503 (1949); RESTATEMENT, CONTRACTS 2D § 203(a); 17A AM.JUR.2D Contracts § 346 (1994).

Equally, where there is an apparent repugnancy between two clauses or provisions of a contract, it is the province or duty of the Court to find harmony between them and to reconcile them if possible. *Jones* v. *Pennsylvania Casualty Co.*, 140 N.C. 262, 52 S.E. 578 (1905); 17A AM.JUR.2D Contracts § 393 (1994).

It is also a fundamental rule of contract construction that the entire contract be given meaning, force and effect, if that can be established reasonably and consistently. *Johnson* v. *Glen Falls Ins. Co*., 131 S.C. 253, 127 S.E. 14, 40 A.L.R. 993 (1925); 17A AM.JUR.2D Contracts § 386 (1994).

The resolution here is within the language of the provision applying to J.D. Properties, TÄSCHNER's predecessor. That entity was charged in the "Grant of Easement and Right of Way" with responsibility for "natural occurrences". That phrase must, of necessity, include future wear and tear on Rental Way. Thus the true meaning and reconciliation of the provisions of the "Grant of Easement and Right of Way" becomes clear: SARN was to repair the road at or shortly after the date of the "Grant of Easement and Right of Way", while the future upkeep will be the responsibility of TÄSCHNER's predecessor, and thus of TÄSCHNER. SARN in fact made repairs to Rental Court shortly after the sale to TÄSCHNER's predecessor. [RECORD ON APPEAL, Deposition of Sarn, p.157, l.18-24.]

Likewise, the Owner's Title Insurance Policy issued by Mr. Hyatt, the closing attorney to TÄSCHNER's predecessor, mentions only of the standard language contained in the deed into J.D. Properties of the Carolinas, LLC; no mention is made and no coverage is stated as to the language of the purported "Grant of Easement and Right of Way". The responsibility of TÄSCHNER's predecessor or of TÄSCHNER for its equitable contribution to future repairs or maintenance of the easement known as Rental Way has never been waived - either expressly or by implication - nor contracted away. The duty of TÄSCHNER for contribution for those repairs exists and must be enforced by our Courts.

Equally, the responsibility of RHEA for contribution is clearer. The Deed into RHEA by SARN contains no undertaking as to Rental Court by SARN, nor any waiver of SARN's right to contribution. The lower Court's rationale for application of the wording of the "Grant of Easement and Right of Way" would seem to be that quoted language in the agreement with TÄSCHNER's predecessor, was made

without consideration of the other language as to the responsibility of TÄSCHNER's predecessor, and without considering the necessary reconciliation of all terms in the "Grant of Easement and Right of Way" set out above. Further, it is a general proposition that the rights of a third party, such as RHEA under a contract, such as the Grant of Easement to TÄSCHNER's predecessor, are determined by the intention of the parties to the contract. 17A AM.JUR.2D Contracts § 440 (1994). There is no indication within the four corners of the Grant of Easement as to any intent to benefit third parties. [RECORD ON APPEAL, p.138-139.]

In its Order of February 5th, 2025, this Court states its conclusions as follows, in summary:

> We hold the master-in-equity did not err in granting Respondents' motion for summary judgment because Sarn unambiguously assumed responsibility for the maintenance of the easement. . . .
> He also executed a document granting the easement at the same time as the deed, stating that Sarn "hereby agrees to be fully responsible for the total cost for the upkeep and maintenance of [the easement]." These clauses unambiguously indicate Sarn's intention to be solely responsible for the upkeep of the easement. . . .
> We hold the master-in-equity did not err in granting Respondents' motion for summary judgment because Sarn unambiguously assumed responsibility for the maintenance of the easement. . . .
> These clauses unambiguously indicate Sarn's intention to be solely responsible for the upkeep of the easement.
> [Order filed February 5, 2025.]

In commenting on this Order, the Appellant notes that the only evidence before it, and the Trial Court was the language of the documents cited herein. The "Grant of Easement and Right of Way" involving TÄScHNER contains a clear contradiction between its terms. Again, the Deed into RHEA contains no undertaking as to Rental Court by SARN, nor any waiver of SARN's right to contribution. Counsel is at a loss to understand the repeated assertion that the Trial Court's conclusions aare "unambiguous" within any meaning of that word.

It is the province of Courts to weigh evidence and draw conclusions. Where, as here, the only evidence is inherently contradictory, no Court is entitled to disregard simple logic.

The Appellant moves for a reconsideration of the Court's ruling, either by the original Judges or *en banc.*

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February 20, 2025

Rock Hill, South Carolina

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Of whom James C. Rhea, III and Taschner Textile Industries, LLC are the

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PROOF OF SERVICE

I certify that I have served the Petition for Rehearing or Rehearing *En Banc* on the following counsel or persons of record:

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by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known

address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R. and

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section d(1) of the Order of the Supreme Court dealing with Electronic Filing and Service issued August 25, 2021.

February 20, 2025

_____

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